

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15828
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On June 15, 2001, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for taxable year 2000 in the amount of \$2,668.

The taxpayer, through his representative, filed a timely protest and a telephone conference was held with the taxpayer and his representative, [Redacted], CPA, on March 14, 2002. In attendance at the conference were [Redacted], Commissioner; [Redacted], Tax Appeals Specialist; and [Redacted], Tax Enforcement Supervisor. The Tax Commission has reviewed the file and hereby issues its decision.

The taxpayer filed his 2000 Idaho income tax return claiming a filing status of married filing separate with two dependents. He properly split the total income shown in his and his wife's, [Redacted] W-2s. However, TDB identified additional income that had not been reported in the return the taxpayer filed with the Tax Commission. The additional income was the result of [Redacted] embezzling money from her employer.

Idaho Code § 63-3045 (1)(a) states:

63-3045. Notice of redetermination or deficiency --
Interest. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery

service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

TDB issued a deficiency notice, which the taxpayer appealed. The taxpayer's file was transferred to the Legal/Tax Policy Division of the Tax Commission for administrative review. An informal telephone conference was held and additional information was received.

In response to TDB's determination that the taxpayer owed additional taxes for the 2000 tax year, the representative said the taxpayer was an innocent spouse because he did not know his wife was embezzling money and he derived no benefit from the additional income. The taxpayer asked the Tax Commission to not hold him responsible for the Idaho income taxes resulting from the additional income obtained through his wife's illegal acts.

During the teleconference and subsequent correspondence, the taxpayer's representative asked the Tax Commission to consider how little the taxpayer gained from the additional money as demonstrated by the divorce settlement and the worth of the community assets before and after the thefts. The taxpayer stated that his wife handled all the money and paid all the bills. That fact was verified with the canceled checks. [Redacted] signed all but a few of the checks drawn on their joint checking account. Some of those checks appear to have been written by [Redacted] but signed by [Redacted]. Embezzled funds are income to the person who takes the money. In this case, [Redacted] was convicted of embezzling from her employer. Bank records obtained by the Tax Commission and court testimony by both the taxpayer and [Redacted] confirmed the money was deposited in a joint bank account along with wages and other income. The family's living expenses

and other purchases were paid from the funds in that account. Many of the expenses were related to supporting the family's horses with purchases such as: an additional two acres of land, at least one horse trailer, at least one additional horse, fence panels, horse tack, and veterinary expenses.

In the taxpayer's divorce Memorandum and Order, (a copy of the Order was submitted to the Tax Commission for review by the taxpayer's representative) it is stated that [Redacted] testified he understood that [Redacted] was receiving "bonuses" from her employer each month. [Redacted] testified that, when money ran short, [Redacted] would say, "It's about time for another bonus, [Redacted]."

Whether or not [Redacted] knew there was unreported income or the source of the income is not relevant. Idaho is a community property state, which means, income received by either spouse is recognized as income received by them jointly as members of the "community." The income derived from [Redacted] thefts was joint income. Additionally, while there is a federal statute that recognizes the role of an innocent spouse and provides innocent spouse relief, Idaho has no such provision.

[Redacted] and his representative questioned including the embezzled money in the taxpayers' income because of the restitution the Court ordered [Redacted] to pay. Embezzled funds are income in the year they are received. In the present matter, the money was taken over a period of three years. Therefore, the total additional income is divided over the three years according to the amount that was taken each year. Restitution, which is part of the punishment for the crime, can be deducted as a miscellaneous deduction during the year the restitution or portion of the restitution is paid. This deduction is limited to the person that was ordered by the Court to make restitution.

After reviewing the information in the file and the testimony presented at the teleconference, the Tax Commission finds the taxpayer has not provided the Tax Commission with a contrary result to the deficiency notice. Therefore, the Tax Commission upholds the deficiency as asserted.

WHEREFORE, the Notice of Deficiency Determination dated June 15, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for the tax year 2000:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,744	\$872	\$176	\$2,792

Interest is computed through August 15, 2002.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

ADMINISTRATIVE ASSISTANT 1